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No. 84-739

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

SEVERO PASILLAS,

Appellant,

v.

AGRICULTURAL LABOR RELATIONS BOARD,

Appellee.

On Appeal from the California Court of Appeal, First Appellate District, Division Two

APPELLANT'S OPPOSITION TO APPELLEES' MOTIONS TO DISMISS OR AFFIRM

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v.

AGRICULTURAL LABOR RELATIONS BOARD,

Appellee.

BRIEF OPPOSING MOTIONS TO DISMISS OR AFFIRM

The underlying issue in this case is whether the union-security agreement between appellant's employer and the United Farm Workers of America—negotiated pursuant to § 1153(c) of the California Agricultural Labor Relations Act (ALRA), CAL. LABOR CODE § 1153(c)—deprives the appellant (and other farm workers) of fundamental rights guaranteed by the Constitution of the United States. (Second Question Presented in Appellant's Jurisdictional Statement.) However, since most rights secured by the Constitution are protected only against infringement by governments, the threshhold issue is whether there is sufficient GOVERNMENTAL ACTION to trigger constitutional scrutiny of an ALRA-sanctioned union-security agreement negotiated by private parties. (First Question Presented in Appellant's Jurisdictional Statement.)

Appellant Severo Pasillas submits this short Reply Brief to correct certain misconceptions created by the Appellees' Motions to Dismiss or Affirm regarding the First Question Presented, i.e whether there is sufficient STATE ACTION to trigger constitutional scrutiny.

Appellees contend that since the common law of California did not restrict the rights of employers and labor unions to require full union membership, the 1975 codification of the common law into the ALRA did not constitute sufficient STATE ACTION to subject the new statute to constitutional scrutiny under the Fourteenth Amendment. Additionally the appellees contend that the ALRA's union-security authorization is passive and the STATE does not require that farm workers become and remain union members in good standing. In their view, compulsory union membership results from the actions of private parties, not from State action. Accordingly, appellees contend that the California Court of Appeals was correct in not addressing the Appellant's constitutional challenge to the statute.

What the appellees fail to acknowledge is that the enactment of the ALRA did far more than codify California's common law regarding union-security agreements. Under the California common law, employees did not have any right to refrain from joining or supporting a labor union—their employer could compel them to become full members of a labor union, even if that union did not represent a majority of the workers! Since the State was not involved in these actions by private parties, constitutional analysis would have been improper. However, when the STATE LEGISLATURE enacted the

ALRA in 1975, it granted farm workers rights they did not possess under the common law. Section 1152 of the Act provided that:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and
>
> shall also have the *right to refrain* from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of § 1153.

LABOR CODE § 1152 (emphasis supplied). Section 1153(c) of the ALRA then went on to authorize labor unions—which had been *certified* as the exclusive bargaining representative by the California Agricultural Labor Relations Board (ALRB)—to negotiate agreements requiring that farm workers, in order to retain their jobs, become and remain union members in good standing. The statute defined membership as "the satisfaction of all *REASONABLE* terms and conditions uniformly applicable to other members in good standing." LABOR CODE § 1153(c) (emphasis supplied). Finally, under this statutory system, it was left to the STATE AGENCY (the ALRB) to decide which "terms and conditions of membership" were REASONABLE under the statute.

From this brief description of the statute, it is abun-

dantly clear that the ALRA did far more than codify the California common law regarding union-security. It granted farm workers rights they did not possess under the common law. It created a STATE AGENCY to conduct farm worker elections and certify the winner. It then authorized the STATE "certified" representatives to negotiate "membership in good standing" agreements. Finally, the statute authorized the STATE AGENCY to determine which "terms and conditions" of union membership were REASONABLE. The enactment, enforcement and operation of this statute has significantly changed the common law of California; and there can be little doubt that there is sufficient STATE ACTION to subject the statute to constitutional scrutiny. This case does *not* involve the private misuse of a State statute but rather challenges "the procedural scheme created by the statute which is obviously the product of STATE ACTION." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S. Ct. 2744, 2756 (1982) (emphasis supplied).

One final point should be noted. The ALRB, in its Motion to Affirm, repeatedly points out that the union-security authorization contained in § 1153(c) is *permissive* and not *mandatory* and "does not involve the government in the decision of a labor organization and an employer to negotiate union-security agreements." ALRB Motion to Affirm, p.6. Although the statute does not *require* that the STATE AGENCY become involved in the decision to negotiate a union-security agreement, this STATE AGENCY, in enforcing the statute, has consistently held it to be an unfair labor practice for an employer to refuse to agree to "membership in good standing" agreements. *See, e.g., Montebello Rose Co.*, 5

A.L.R.B. No. 64 (1980); *J.R. Norton Co.*, 8 A.L.R.B. No. 89 (1982). Thus for all practical purposes, the STATE has compelled the employers to agree to compulsory unionism agreements or subject themselves to significant make-whole remedies. The ALRB's attempts to characterize itself as a passive, disinterested party should be rejected—this STATE AGENCY has been deeply involved in ensuring that the maximum number of farm workers become and remain union members.

CONCLUSION

Based on the discussions above and those contained in the original Jurisdictional Statement, as well as those contained in the companion case of *Navarro v. Agricultural Labor Relations Board* (Docket Number 84-746), the Appellant Severo Pasillas requests that this Court EITHER

- note Probable Jurisdiction and set the case for argument OR
- dismiss the appeal with directions that the federal district court continue addressing the federal constitutional claims in *Beltran v. California*, Southern District of California, Case No. 83-0722 JLI(I).

Respectfully submitted,

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